

ORDINANCE NO. 20121206-039

**AN ORDINANCE APPROVING THE NEGOTIATION AND EXECUTION OF A
MANAGED GROWTH AGREEMENT FOR DEVELOPMENT OF THE ST.
MICHAEL'S EPISCOPAL CHURCH SITE PLAN.**


BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The Council finds that the St. Michael's Episcopal Church Site Plan described in SPC-01-0456C(XT2).MGA is a large, long-term project under Section 25-1-540 (*Managed Growth Agreements*).

PART 2. The Council authorizes the City Manager to negotiate and execute a Managed Growth Agreement ("MGA") between the City of Austin and The Protestant Episcopal Church Council of the Diocese of Texas, St. Michael's Episcopal Church, in substantially the same form as the agreement attached and incorporated into this ordinance as Exhibit A. The MGA is limited to the St. Michael's Episcopal Church Site Plan as approved in SPC-01-0456C(XT2).MGA, subject to any minor revisions approved in accordance with the MGA. To the extent the MGA conflicts with the City Code, the MGA shall be controlling.

PART 3. This ordinance takes effect on December 17, 2012.

PASSED AND APPROVED

_____, December 6, 2012 §
 §
 § 
 Lee Leffingwell
 Mayor


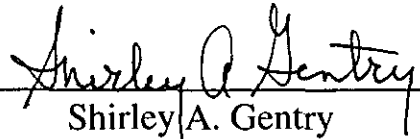
APPROVED:  **ATTEST:** 
 Karen M. Kennard Shirley A. Gentry
 City Attorney City Clerk

Exhibit A

MANAGED GROWTH AGREEMENT **BETWEEN THE CITY OF AUSTIN AND** **The Protestant Episcopal Church Council of the Diocese of Texas**

This Managed Growth Agreement ("Agreement") Between the City of Austin, Texas ("City") and The Protestant Episcopal Church Council of the Diocese of Texas ("The Church") is made and entered into by the City, a home rule municipal corporation acting by and through its duly authorized City Manager and The Church. The Church and the City may be referred to jointly as Parties or singly as Party in this Agreement.

RECITALS

1. On October 29, 2001, The Church filed an application for a consolidated site plan for the construction of a religious assembly campus on the property described in Exhibit A, which is attached hereto and incorporated herein ("the Property").
2. On April 16, 2002, the Planning Commission approved Site Plan No. SPC-01-0456C, authorizing the construction of a 4 phased religious assembly campus, which includes a sanctuary, children's education building, parish hall, education and administration building, chapel, courtyard, playground, surface parking, a detention and water quality pond and infrastructure on 11.32 acres. ("the Project"). The approval by the Planning Commission included a 10 year extended permit life. Portions of the Project, including detention and water quality pond and infrastructure have been completed.
3. The Church requests an extended amount of time to conduct a capital campaign realizing the process for the campaign takes extensive planning and implementation, and could take 27 years to complete the financing and construction for the remaining buildings and improvements.

NOW, THEREFORE, for and in consideration of the mutual covenants, and conditions contained in this Agreement, and other good and valuable consideration, the City and The Church agree as follows:

A R T I C L E I **PURPOSE & LEGAL AUTHORITY**

Section 1.01 Purpose.

The purpose of this Agreement is to provide certainty that the Project will not be required to undergo design changes as a result of changes to City regulations over a long period of time required for The Church to complete the capital campaign and construction.

Section 1.02 Legal Authority.

Section 25-1-540 of the City Code authorizes the execution of managed growth agreements for planning and developing large projects, long term projects, or any project having special benefits that are in the public interest. The Project is a long term project situated on 11.32 acres.

Section 1.03 Expiration Date

Section 25-1-540 provides that a managed growth agreement may specify the time period during which a project may comply with the regulations in effect when the first application for the project is filed and establish an expiration date for each application necessary to complete the project. By Resolution No. _____, the City Council directed that the expiration date is to be December 6, 2027.

ARTICLE II **TERMS**

Section 2.01 Original Regulations; Expiration Date

Subject to Section 2.03 below, The Church may construct the Project to comply with City regulations in effect on October 29, 2001, per Ordinance No. 890202-B, and Ordinance No. 010719-28 which allows development under the Davenport West PUD ("Original Regulations"). The expiration date of Site Plan No. SPC-01-0456C(XT2).MGA for purposes of Chapter 25-5 of the City Code and the expiration date of the Project for purposes of Article 12 of Chapter 25-1 of the City Code shall be December 6, 2027.

Section 2.02 Revisions to the Site Plan; Change in Ownership

Minor revisions to the Project shall be permitted in accordance with the City Code and City regulations. However, The Church may not construct any improvements on the Property that the City Manager determines to vary substantially from the Project as defined by Site Plan No. SPC-01-0456C(XT2).MGA without forfeiting the rights granted under this Agreement to develop the Project under Original Regulations. This Agreement does not abridge the rights of The Church or its successors.

Section 2.03 Exceptions from Right to Develop Under Original Regulations

In this section, The Church agrees to comply with City regulations adopted after October 29, 2001, as they pertain to:

- a) erosion and sedimentation controls;
- b) uniform building, fire, electrical, plumbing, or mechanical codes adopted by recognized national code organizations or local amendments to those codes enacted to address imminent threats of destruction of property or injury to persons;
- c) regulations to prevent the imminent destruction of property or injury to persons that do not affect landscaping, tree preservation, open space, or park dedication, lot size or dimensions, lot coverage, building size, residential or commercial density, or timing of the project, or that change development permitted by a restrictive covenant required by the City; and

A R T I C L E I I I
MISCELLANEOUS PROVISIONS

Section 3.01 Notice.

It is contemplated that the Parties will contact each other concerning the subject matter of this Agreement. However, any formal notice or communication required to be given by one Party to another by this Agreement ("Notice") shall be given at the addresses below for the Parties.

Notice may be given by: (1) delivering the Notice to the Party to be notified; (2) by depositing the Notice in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified; or (3) by sending the Notice by telefax with confirming copy sent by mail to the Party to be notified.

Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective after the earlier of the date of actual receipt or three days after the date of the deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified or purposes of Notice, the addresses of the Parties shall, until changed as provided in this section, be as follows:

City of Austin: City Manager

 P.O. Box 1088 Austin,
 Texas 78767

with required copy to: City Attorney

 P.O. Box 1088 Austin,
 Texas 78767

Owner

The Protestant Episcopal Church Council of the diocese of Texas

6317 Bee Caves Road

Austin, TX 78746

Attention: Jolynn Free

The Parties may change their addresses for Notice purposes by providing five days written notice of the changed address to the other Party.

If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating Notice is extended to the first business day following the Saturday, Sunday, or legal holiday.

Section 3.02 Severability.

The provisions of this Agreement are not severable. If any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement, or the application of the word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to any person or circumstance is held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the Parties agree and understand that the omission of the word, phrase, clause, sentence, paragraph, section, or other part of this Agreement would frustrate the purpose of this Agreement, and, therefore, in that event, this Agreement shall terminate.

Section 3.03 Waiver.

Any failure by a Party to the Agreement to insist on strict performance by the other Party of any provision of this Agreement shall not be deemed a waiver of the provision or of any other provision of the Agreement. A Party has the right at any time to insist on strict performance of any of the provisions of this Agreement.

Section 3.04 Applicable Law and Venue.

The construction and validity of this Agreement shall be governed by the laws of the State of Texas (without regard to conflict of laws principles). Venue shall be in Travis County, Texas.

Section 3.05 Incorporation of Exhibits.

All Exhibits attached to or referred to in this Agreement are incorporated into this Agreement by reference for the purposes set forth in this Agreement.

Section 3.06 Assignability, Successors, and Assigns.

This Agreement is not assignable by The Church or the City without the prior written consent of the City Council or The Church.

The Agreement shall be binding on and inure to the benefit of the Parties and their respective representatives, successors, and assigns.

Section 3.07 Amendment.

This Agreement may only be amended in writing on the approval of the City Council and The Church.

ARTICLE IV
DEFAULT AND REMEDIES FOR DEFAULT

Section 4.01 Default.

On the occurrence, or alleged occurrence, of an event of default, the non-defaulting Party shall send the defaulting Party notice of its default or alleged default. Except as otherwise specifically provided in this Agreement, the defaulting Party must cure its default within 30 days following the notice of the receipt of the default, or, must begin to cure the default within 14 days following receipt of the notice of default and diligently pursue the cure to completion within 50 days of receipt of the notice of default. *If the defaulting Party fails to abide by these deadlines, the non-defaulting Party shall have all rights and remedies available in law and equity and all rights and remedies provided in this Agreement. All of these rights and remedies shall be cumulative.*

This Agreement shall be effective on the date it has been signed by both Parties.

The Protestant Episcopal Church Council of the diocese of Texas

By: _____

Name: _____

Title: _____

Date: _____

Approved as to form:

City of Austin

Brent Lloyd

Sue Edwards

Assistant City Attorney

Assistant City Manager

Date:

EXHIBIT A

"The Property"

Davenport West Subdivision Block B, Lot 33, Travis County Document # 200200031